

No. 12694

United States
Court of Appeals
for the Ninth Circuit.

HARRY THEODORE PETERSEN, IDA
PETERSEN, CLAYTON LEON DAIGLE
and AZILE CAROL DAIGLE, Individually
and as a Copartnership Doing Business as
"The Lodge," and STATE OF CALI-
FORNIA,

Appellants.

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record

Appeal from the United States District Court
Southern District of California,
Northern Division.

FILED

NOV - 3 1950

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE SOUTHERN DISTRICT OF
CALIFORNIA, NORTHERN DIVISION

No. 849-ND Civil

UNITED STATES OF AMERICA,

Plaintiff,

vs.

HARRY THEODORE PETERSEN, IDA PETERSEN, CLAYTON LEON DAIGLE and AZILE CAROL DAIGLE, a Co-Partnership Doing Business as "The Lodge,"

HARRY THEODORE PETERSEN, IDA PETERSEN, CLAYTON LEON DAIGLE and AZILE CAROL DAIGLE, Individually,

JOHN DOE ONE, JANE DOE ONE, JOHN DOE TWO, JANE DOE TWO, a Co-Partnership

and

JOHN DOE ONE, JANE DOE ONE, JOHN DOE TWO and JANE DOE TWO, Individually,
Defendants.

COMPLAINT FOR INJUNCTION

[Violation of National Park Service Regulations]

Comes Now the United States of America and complains of the defendants, and each of them, and alleges as follows: [2*]

I.

That this is a suit of a civil nature brought by the

* Page numbering appearing at foot of page of original Reporter's Transcript of Record.

United States of America, that jurisdiction of this Court arises under the provisions of Title 28, Section 1345 of the United States Code, and that this Court has jurisdiction to hear and determine the within matter.

II.

That the defendants Harry Theodore Petersen, Ida Petersen, Clayton Leon Daigle and Azile Carol Daigle are residents of the State of California and reside within the Southern District of California, Northern Division.

III.

That the defendants John Doe One, Jane Doe One, John Doe Two and Jane Doe Two are sued herein under their fictitious names, their true names being unknown to plaintiff; that when their true names have been ascertained, plaintiff will ask leave of court to amend its complaint accordingly.

IV.

That the defendants do now operate, and have for some time past operated, a cocktail lounge, bar or saloon known as "The Lodge" wherein spirituous and intoxicating liquors, beer and wine are sold to the public.

V.

That "The Lodge" is located on Lots 11, 12 and 13 of Block 14 of General Grant Grove, Wilsonia Tract, Section 5, Township 14 South, Range 28 East, Mt. Diablo Meridian, California; that the defend-

ants are in possession of the above described real property and the buildings thereon.

VI.

That the above described property is located within the exterior boundaries of those certain tracts of land set aside and dedicated for park purposes by the United States of America as Kings Canyon National Park, California, by virtue of the Act of Congress dated March 4, 1940. [54 Stat. 41], Sec. 2, which reads as follows:

“Sec. 2. That the General Grant National Park is hereby abolished, and the west half of section 33, township 13 south, [3] range 28 east, and west half of section 4, all of section 8 and the northwest quarter of section 9, township 14 south, range 28 east, Mount Diablo Meridian, California, together with the lands formerly within the General Grant National Park, California, and particularly described as follows, to wit: All of sections 31 and 32, township 13 south, range 28 east, and sections 5 and 6, township 14 south, range 28 east, of the same meridian, are, subject to valid existing rights, hereby added to and made a part of the Kings Canyon National Park, and such lands shall be known as the General Grant grove section of the said park.”

VII.

That exclusive jurisdiction over the lands encompassed by the boundaries of the General Grant Na-

tional Park, all of which lands are now encompassed by the boundaries of the General Grant grove section of the Kings Canyon National Park, was ceded by the State of California to the United States of America Statutes, 1919, Chapter 51, Section 1, and by an Act of the Legislature of California approved April 7, 1943, known as Section 119 of the Government Code of California.

VIII.

That exclusive jurisdiction over the lands encompassed by the boundaries of the General Grant National Park, all of which lands are now encompassed by the boundaries of the General Grant grove section of the Kings Canyon National Park, was accepted by the government of the United States by the Act of Congress on June 2, 1920, 41 Stat. 731, 16 U.S.C. Section 57, and by letter dated April 21, 1945 from the Secretary of the Interior, Harold L. Ickes, written pursuant to the authority of the Act of Congress on October 9, 1940, 54 Stat. 1083, 40 U.S.C. Section 255, and in accordance with the requirements of Section 119 of the Government Code of California, to the Honorable Earl Warren, Governor of California, which was received and signed by the said Governor Earl Warren on April 25, [4] 1945.

IX.

That pursuant to the laws and statutes of the United States, the Secretary of the Interior is empowered and authorized to issue such regulations

as he deems necessary to carry out the purposes, functions, and administration of National Parks of the United States.

X.

That pursuant to the powers invested in him, the Secretary of the Interior of the United States, on October 24, 1947, published notice [12 Federal Register 6927] of a proposed rule to govern sale of intoxicating liquor on private lands in National Parks over which the United States exercises exclusive jurisdiction.

XI.

That pursuant to said notice, the Secretary of the Interior, on February 10, 1948, amended Title 36, Code of Federal Regulations, to add Section 12.8 [13 Federal Register 598-599] promulgating a regulation governing the sale of intoxicating liquors on private lands in National Parks over which the United States exercises exclusive jurisdiction.

XII.

That pursuant to Title 36, Code of Federal Regulations, Section 12.8, a permit, issued by the appropriate Regional Director, National Park Service, for the sale of alcoholic, spirituous, vinous, or fermented liquor, containing more than one per cent of alcohol by weight, is required.

XIII.

That the defendants sell alcoholic, spirituous,

vinous and/or fermented liquor containing more than one per cent of alcohol by weight.

XIV.

That the said defendants do not hold, nor have they ever held, a permit from the United States government or its agencies for the sale of said liquors, as required by Section 12.8 of Title 36, Code of Federal Regulations.

XV.

That on November 26, 1947, defendant Harry Theodore Petersen [5] applied to the Department of the Interior, Park Service, Regional Office, San Francisco, California, for a permit pursuant to the then proposed Section 12.8.

XVI.

That on March 3, 1948, the said Regional Office denied said application of the said Harry Theodore Petersen; that said defendant Petersen requested a reconsideration of his application and an oral hearing; that said request for reconsideration was withdrawn by his letter of May 3, 1948; that no appeal from said order of denial has been taken by the said Harry Theodore Petersen.

XVII.

That by letter dated July 27, 1948, from the Regional Director, National Park Service, San Francisco, to the defendant Harry Theodore Petersen,

the National Park Service advised defendant Petersen that the National Park Service did not recognize the jurisdiction of the State Board of Equalization, either to grant or deny liquor licenses to applicants whose premises are located within the boundaries of the Kings Canyon National Park, and that the sale of liquor at "The Lodge," Wilsonia Tract, Kings Canyon National Park, without a permit as required by Federal Regulations [13 F.R. 598 and 599; 36 C.F.R. 12.8], would subject said defendant Petersen and his co-defendants to prosecution.

XVIII.

That "The Lodge" is located in a small area of privately owned property consisting of a residential district composed almost exclusively of mountain summer homes; that there is but little State or County police protection in the area, as the nearest County police office is at Visalia, approximately fifty miles distant; that the National Park Service has a Park Ranger Station within one mile of Wilsonia; that the General Grant grove section of Kings Canyon National Park is maintained by the United States Government as a recreation area; and, that it is visited largely by family groups including children.

XIX.

That the unrestricted and unlicensed sale of intoxicating liquors in said national park, under the circumstances alleged in paragraph XVIII here-

in, [6] and in violation of Section 12.8 of Title 36, Code of Federal Regulations, constitutes a violation of law contravening public policy, and constituting a detriment to the public welfare and morals.

XX.

That great and irreparable injury will be done to the public welfare and morals, and the Government of the United States will be frustrated and hindered in its operation, control, and policing of the Kings Canyon National Park recreation area, unless these defendants are restrained and enjoined from operating said cocktail lounge, bar or saloon, and from selling alcoholic, spirituous, vinous and/or fermented liquors on the premises.

Wherefore, the plaintiff prays judgment against the defendants herein, and each of them, as follows:

1. That the said defendants be restrained and enjoined from the sale of alcoholic, spirituous, vinous, or fermented liquor at "The Lodge," or elsewhere within Kings Canyon National Park, without a permit from the United States Government as required by Section 12.8 of Title 36, Code of Federal Regulations;

2. That the real property upon which "The Lodge" is located, and as more particularly set forth in Paragraph V above, is subject to the exclusive jurisdiction of the United States of America;

3. That the plaintiff have its costs of suit incurred herein; and

4. That the plaintiff be granted such other and further relief as the Court may deem meet and proper in the premises.

JAMES M. CARTER,
United States Attorney,

CLYDE C. DOWNING,
Assistant U. S. Attorney,

/s/ MAX F. DEUTZ,
Assistant U. S. Attorney,
Attorneys for Plaintiff.

[Endorsed]: Filed August 5, 1949. [7]

[Title of District Court and Cause.]

ANSWER

Come now Henry Theodore Petersen, herein sued as Harry Theodore Petersen, Ida Petersen, Clayton Leon Daigle and Azile Carol Daigle, individually and as a copartnership, doing business as "The Lodge," and for answer to the Complaint of Plaintiff admit, [8] deny and allege as follows, to wit:

I.

Answering Paragraph I, the Defendants admit the allegations thereof.

II.

Answering Paragraph II, the Defendants admit the allegations thereof.

III.

Answering Paragraph IV, the Defendants admit the allegations thereof.

IV.

Answering Paragraph V, the Defendants deny that "The Lodge" is located on Lots 11, 12 and 13 of Block 14 of General Grant Grove, Wilsonia Tract, Section 5, Township 14 South, Range 28 East, Mt. Diablo Meridian, California, but in this connection allege that the lots described as Lots 11, 12 and 13 are situated in Block 13 of General Grant Grove, Wilsonia Tract, Section 5, Township 14 South, Range 28 East, Mt. Diablo Meridian, California, and further admit that the Defendants are in possession of the above-described real property and the buildings thereon.

V.

Answering Paragraph VI of said Complaint, these Defendants, and each of them, deny that any of the property of these Defendants, or any of them, described in said Complaint, is set aside or dedicated for park purposes by the United States of America, or at all; they and each of them deny that said property of these Defendants, or any of them, is any part of the Kings Canyon National Park or of General Grant National Park or of any park, and in this connection they and each of them allege that all of said property is the private property of these Defendants and not in any way a part of or

connected with Kings Canyon National Park or General Grant National Park or any park; these Defendants, and [9] each of them, further deny that the property of these Defendants, described in said Complaint, or any thereof, has been or is added to or made a part of Kings Canyon National Park or the General Grant Grove section of said park, or any park.

VI.

Answering Paragraph VII of said Complaint, these Defendants, and each of them, deny that exclusive or any jurisdiction over the lands of these Defendants, described in said Complaint in Paragraph V thereof, was ceded by the State of California to the United States of America by any Act of the Legislature as described in said Complaint, or at all or at any time, and in this connection these Defendants, and each of them, allege that the exclusive jurisdiction for all purposes over the lands of these Defendants, described in Paragraph V of said Complaint, is and at all times has been vested in the State of California; these Defendants, and each of them, in that respect, deny that the United States of America has exclusive or any jurisdiction over the lands or property of these Defendants, or either of them, mentioned in said Complaint.

VII.

Answering Paragraph IX, these Defendants admit the allegations thereof, but in this connection

these Defendants deny that the Secretary of Interior is empowered to issue any regulations insofar as it affects the property of the Defendants, privately owned by them and hereinabove referred to.

VIII.

Answering Paragraph X, the Defendants admit the allegations thereof, and in this connection allege that the Secretary of Interior of the United States had no power to effect any regulations over the private lands and property of these Defendants within the exterior of the National Park herein referred to, and further deny that the United States had exclusive jurisdiction [10] over the lands and property owned by these Defendants and hereinabove referred to.

IX.

Answering Paragraph XI, the Defendants admit the allegations thereof, but in this connection the Defendants deny that the Secretary of Interior had any jurisdiction whatsoever over the private lands and property of these Defendants within the exterior boundaries of Kings Canyon National Park.

X.

Answering Paragraph XIII, the Defendants admit the allegations thereof.

XI.

Answering Paragraph XIV, the Defendants admit the allegations thereof.

XII.

Answering Paragraph XVII, the Defendants admit the allegations thereof.

XIII.

Answering Paragraph XVIII, the Defendants admit the allegations thereof, and in this connection further allege that the property of the Defendants, as well as the residential area, is visited by the general public at large, and that the residential district therein mentioned is on privately owned land and within the exterior of Kings Canyon National Park.

XIV.

Answering Paragraph XIX, the Defendants generally and specifically deny all, each and every allegation therein contained.

XV.

Answering Paragraph XX, the Defendants generally and specifically deny all, each and every allegation therein contained.

Wherefore, Defendants pray as follows:

1. That the Plaintiff take nothing by reason of its Complaint; [11]
2. That the relief sought be denied; and
3. That the Court by its judgment decree that

the Plaintiff has no jurisdiction over the lands and property of the Defendants.

GEORGE, WINKLER & GIBBS,

By /s/ ELMORE WINKLER,

Attorneys for Defendants.

Duly verified.

Affidavit of service by mail attached.

[Endorsed]: Filed August 27, 1949. [12]

[Title of District Court and Cause.]

STIPULATION PERMITTING STATE OF CALIFORNIA TO INTERVENE AS DEFENDANT; AND ORDER PERMITTING STATE OF CALIFORNIA TO INTERVENE AS PARTY DEFENDANT

Whereas, in the above-entitled matter it is the contention of the plaintiff that the plaintiff has exclusive jurisdiction over the privately owned property of the defendants, which property is situated in what is known as Wilsonia Village, which is located within Section 5 of Township 14 South, Range 28 East, Mount Diablo Base and Meridian, and which area is entirely surrounded by the General Grant Grove section of Sequoia—Kings Canyon National Park, and the defendants named herein contend that the plaintiff does not have exclusive jurisdiction but on the other hand that the State of California has exclusive jurisdiction, and

Whereas, the State of California is not now a party defendant, but claims that it has exclusive jurisdiction over said privately owned land, and [15]

Whereas, the State of California may be bound by judgment in the action, and

Whereas, the claim of the State of California has questions of law and fact in common with the defense of the defendants named herein,

It is therefore stipulated by the parties hereto through their respective counsel that pursuant to the provisions of Rule 24 that the State of California may intervene herein as a party defendant; and the parties hereto, subject, however, to the discretion of the court, waive the presentation to the court of a formal motion to intervene as provided by subdivision (c) of Rule 24.

Dated: October 7, 1949.

JAMES M. CARTER,
United States Attorney.

CLYDE C. DOWNING,
Assistant United States
Attorney.

/s/ MAX F. DEUTZ,
Assistant United States
Attorney,
Attorneys for Plaintiff.

GEORGE, WINKLER AND
GIBBS,
/s/ ELMORE WINKLER,
Attorneys for Defendants
Petersen, et al.

FRED N. HOWSER,

Attorney General of the State
of California.

/s/ BAYARD RHONE,

Deputy Attorney General. Attorneys for State of
California, Defendant and Intervenor. [16]

By the Court:

Good cause appearing therefor, it is hereby
ordered that the State of California may, and leave
is hereby granted to, intervene in this proceeding
as a party defendant.

October 11, 1949.

/s/ WM. C. MATHES,

District Judge.

[Endorsed]: Filed October 11, 1949. [17]

[Title of District Court and Cause.]

PETITION IN INTERVENTION AND AN-
SWER OF THE STATE OF CALIFORNIA

Comes now the State of California, with leave first
obtained by the court, and files this Petition in
Intervention; and in answer to the complaint on
file herein admits, denies and alleges as follows:

I.

Admits the allegations contained in Paragraph I.

II.

Admits the allegations contained in Paragraph II.

III.

Admits the allegations contained in Paragraph III.

IV.

In answer to Paragraph IV this defendant and intervenor denies each and every allegation thereof except as said allegations are specifically alleged or admitted herein, and in this [18] connection alleges the true facts to be that on or about April 15, 1948, the defendant Harry Theodore Petersen and one H. L. Edmunds applied to the State Board of Equalization of the State of California for a seasonal on-sale beer and wine and on-sale distilled spirits licenses, pursuant to the provisions of the Alcoholic Beverage Control Act of the State of California; that on July 22, 1948, said seasonal licenses as applied for were issued to said individuals by the State Board of Equalization and said licenses have been in full force and effect at all times subsequent to July 22, 1948, and that said individuals named have been doing business pursuant to said licenses; that the establishment operated by said individuals is known as "The Lodge" and that spirituous and intoxicating liquors and beers and wines are sold on the premises.

V.

In answer to Paragraph V, this defendant and

intervenor denies generally and specifically each and every allegation thereof, but alleges in this connection the true facts to be that the lots described as lots 11, 12 and 13 are situated in Block 13 of General Grant Grove, Wilsonia Tract, Section 5, Township 14 South, Range 28 East, Mount Diablo Base and Meridian, California, and further admit that some of the individual defendants named herein are in possession of the above-described real property and the buildings thereon.

VI.

In answer to Paragraph VI, defendant and intervenor admits that section 2 of an act of Congress, dated March 4, 1940, (54 Stats. 41) reads as set forth in the complaint, but denies generally and specifically each and every other allegation in said Paragraph VI, and in this connection denies that any of the property of the defendants named herein is set aside or dedicated for [19] park purposes by the United States of America; and in this connection alleges further that there is in the vicinity of what is known as General Grant Grove, formerly known as General Grant National Park, a tract of land known as Wilsonia Village, which tract of land comprises approximately 120 acres of land within Section 5, Township 14 South, Range 28 East, Mount Diablo Base and Meridian, and is a part of a tract of 160 acres of said Section 5, which was originally patented by the United States Government on October 15, 1891, to one Daniel M. Perry; that said Wil-

sonia Tract has remained in private ownership since the issuance of said patent; that said tract of land has been divided into approximately 250 parcels, including the said lots 11, 12 and 13, of Block 14, alleged herein, and all of said parcels of property have been at all times since the issuance of said patent, and are now, in private ownership and since 1891 none of said Wilsonia Tract has ever been or now is owned by the United States of America.

VII.

Denies generally and specifically each and every allegation contained in Paragraph VII, but in this connection alleges the true facts to be as follows: That exclusive jurisdiction over that particular land, the title to which is vested in the United States of America was ceded by the state of California to the United States of America by California Statutes of 1919, Chapter 51, Section 1, and by the act of the Legislature of California, approved April 7, 1943, and known as section 119 of the Government Code of California; that the United States of America does not and never has had title to any of that property referred to herein as Wilsonia Tract subsequent to October 15, 1891; that exclusive jurisdiction for all purposes over said Wilsonia Tract is and at all times mentioned since September 9, 1850, has been and remained vested in the State of California. [20]

VIII.

In answer to Paragraph VIII the defendant and intervenor denies generally and specifically each and every allegation thereof, but alleges the true facts to be as follows: That exclusive jurisdiction over the land, title to which is vested in the United States of America and within the boundaries of what is known as General Grant Grove of Kings Canyon National Park, was accepted by the government of the United States by the Act of Congress on June 2, 1920 (41 Stats. 731, 16 U.S.C. Sec. 57), and by letter dated April 21, 1945, from the Secretary of the Interior, written pursuant to the authority of the Act of Congress of October 9, 1940 (54 Stats. 1083, 40 U.S.C. Sec. 255), and in accordance with the requirements of section 119 of the Government Code of California, to the Governor of California, which was received and signed by said Governor on April 25, 1945.

IX.

Admit the allegations of Paragraph IX, but in this connection defendant and intervenor denies that the Secretary of the Interior is empowered to issue any regulations in so far as they affect property located in the tract known as Wilsonia Village, which is privately owned, and title to which is not vested in the United States of America.

X.

In answer to Paragraph X the defendant and

intervenor admits the allegations thereof, but in this connection alleges that the Secretary of the Interior has no power whatever to make any regulations affecting the private lands and property situated in Wilsonia Village, and denies that the United States of America exercises exclusive jurisdiction over any of the privately owned lands in said tract known as Wilsonia Village. [21]

XI.

In answer to Paragraph XI the defendant and intervenor admits the allegations thereof, but in this connection the defendant denies that the Secretary of the Interior has any jurisdiction whatever over private lands and property located in Wilsonia Village within the exterior boundaries of Kings Canyon National Park, and denies that the United States exercises exclusive jurisdiction over any of said privately owned lands.

XII.

In answer to Paragraph XII the defendant admits the allegations thereof in so far as said allegations refer to lands owned by the United States of America, located in National Parks; but denies said allegations if they are intended to refer to privately owned lands.

XIII.

Admits the allegations contained in Paragraph XIII.

XIV.

Admits the allegations contained in Paragraph XIV.

XV.

Admits the allegations contained in Paragraph XV.

XVI.

Admits the allegations contained in Paragraph XVI.

XVII.

Admits the allegations of Paragraph XVII, but in this connection alleges further that on or about April 15, 1948, defendants Harry Theodore Petersen and H. L. Edmunds applied for seasonal on-sale beer and wine and on-sale distilled spirits licenses to be issued under the Alcoholic Beverage Control Act for said premises concerned herein; that thereafter a protest was filed on behalf of the National Park Service, United States Department of the Interior, objecting to the issuance of the license, on the [22] alleged ground that the United States claimed exclusive jurisdiction over private lands in Kings Canyon National Park; that thereafter said matter was duly and regularly heard by a hearing officer for said Board of Equalization on May 10, 1948, pursuant to the provisions of subdivision (c) of section 11517 of the Government Code; that thereafter and on or about June 4, 1948, said matter was regularly heard by the Board of Equalization of the State of California, and

said matter came on again regularly for hearing before said Board on July 22, 1948, pursuant to notice given to the parties thereto, including the Regional Counsel for National Park Service, and after consideration thereof the State Board of Equalization issued said licenses; that no appeal from said order has been taken.

XVIII.

Admits the allegations contained in Paragraph XVIII.

XIX.

In answer to Paragraph XIX the defendant and intervenor denies generally and specifically each and every allegation contained therein and in this connection alleges further that in said proceedings before the State Board of Equalization the said Board of Equalization found, pursuant to the provisions of Article XX, section 22 of the Constitution of California that the issuance of said licenses would not be contrary to public welfare and morals.

XX.

Denies generally and specifically each and every allegation contained in Paragraph XX.

Wherefore, the defendant and intervenor prays that the plaintiff take nothing by its action; that the court determine [23] that the plaintiff has no jurisdiction over the privately owned lands in said

Wilsonia Village, and the defendants go hence with their costs incurred herein.

FRED N. HOWSER,
Attorney General.

/s/ BAYARD RHONE,
Deputy Attorney General,
Attorneys for State of California, Intervenor and
Defendant.

Duly verified.

Receipt of Copy acknowledged.

[Endorsed]: Filed October 11, 1949. [24]

GOVERNMENT'S EXHIBIT NO. 1

[Title of District Court and Cause.]

STIPULATION OF FACTS FOR PURPOSES
OF TRIAL

It is hereby stipulated by and between the parties hereto, through their respective counsel, Ernest A. Tolin, United States Attorney, and Clyde C. Downing and Max F. Deutz, Assistant United States Attorneys, for the plaintiff, George, Winkler and Gibbs by Elmore Winkler for the defendants Peteren, et al., Fred Howser, Attorney General, and Bayard Rhone, Deputy Attorney General, for the defendant, State of California, and Stammer and McKnight by Walter H. Stammer for the defendants Cutler and Neff, et al., that the following Stipulation of Facts are agreed as the Facts to

be admitted without objection as evidence for the purpose of trial subject to the reservations set forth in Paragraph XXXI and XXXII hereof.

Now Therefore It Is Stipulated that

I.

The defendants Henry Theodore Petersen, Ida Petersen, Clayton Leon Daigle and Azile Carol Daigle are a copartnership which does now operate, and has for some time past operated, a cocktail lounge and restaurant known as "The Lodge," wherein spirituous and intoxicating liquors, beer, wine and food are sold to the public.

II.

The defendants Petersen and Daigle are citizens and residents of the State of California and are the successors in interest of a partnership consisting of Henry Theodore Petersen and H. L. Edmunds, which formerly owned and operated "The Lodge."

III.

"The Lodge" is located on Lots 11, 12 and 13 of Block 13 of Wilsonia Tract, in Section 5, Township 14 South, Range 28 East, Mount Diablo Base and Meridian, in the County of Tulare, State of California, according to the map thereof on file and of record in the office of the County Recorder of said County of Tulare, State of California, in Book 16, of Maps, at page 20. The defendants Petersen and Daigle are in possession of the above

described real property and the buildings thereon. That said defendants Petersen also own Lot A of said Wilsonia Tract. Wilsonia Tract, Mesa Addition to Wilsonia Tract, and Sierra Masonic Family Club Tract are residence tracts located on approximately 120 acres of land within Section 5, Township 14 South, Range 28 East, Mount Diablo Base and Meridian, and are known generally as 'Wilsonia Village.' The lands upon which said tracts are situate are a part of a tract of 160 acres in said Section 5 which was originally patented by the United States Government on October 15, 1891, to one Daniel M. Perry. The area included in said Wilsonia Tract, Mesa Addition to Wilsonia Tract and Sierra Masonic Family Club Tract has remained in private ownership since the issuance of said patent, and said tracts have been divided into approximately 500 parcels. The real property of the defendants hereinabove described and the real property of intervenors [28] A. R. Cutler, Johny D. Neff and Elsa A. Neff, et al., hereinafter described has been at all times since the issuance of said patent, and now is, in private ownership; and at all times since 1891 none of said Wilsonia Tract, or Mesa Addition to Wilsonia Tract, or Sierra Masonic Family Club Tract has ever been, or now is, owned by the United States of America, except for the southerly portions of Lots 132, 133, 134, 135, 136, 137, 138, 139, 140, 155, 156, 157, 158, 186, 167, 171, 172, 177B, 177A, deeded to private owners by the United States of America, pursuant to 56 Stat. 310. Attached hereto, marked

Exhibit "A" is a map of the said 120-acre area, showing said Wilsonia Tract, Mesa Addition to Wilsonia Tract, and Sierra Masonic Family Club Tract. Attached hereto as Exhibit "B" is a map of Section 5, showing thereon the tract of approximately 160 acres originally patented by the United States Government on October 15, 1891, to Daniel M. Perry showing thereon the areas included in Wilsonia Tract, Mesa Addition to Wilsonia Tract, and Sierra Masonic Family Club Tract, and two tracts of land formerly in private ownership which have been purchased, and are now owned by the United States.

IV.

An Act of the Legislature of the State of California approved April 15, 1919 (Cal. Statutes 1919, Ch. 51, Sec. 1), provides as follows:

"Section 1. Exclusive jurisdiction shall be and the same is hereby ceded to the United States over and within all of the territory which is now or may hereafter be included in those several tracts of land in the State of California set aside and dedicated for park purposes by the United States as "Yosemite national park," "Sequoia national park," and "General Grant national park," respectively; saving, however, to the State of California the right to serve civil or criminal process within the limits of the aforesaid parks in suits or prosecutions for or on account of rights acquired, obligations incurred or crimes committed in said state outside of said parks; and saving further, to

the said state the right to tax persons and corporations, their franchises and property on the lands included in said parks, and the right to fix and collect license fees for fishing in said parks; and saving also to the persons residing in any of said parks now or hereafter the right to vote at all elections held within the county or counties in which said parks are situate; provided, however, that jurisdiction shall not vest until the United States through the proper officer notifies the State of California that they assume police jurisdiction over said parks."

V.

An Act of Congress of June 2nd, 1920 (41 Stats. 731), 16 U.S.C.A. 57, provides as follows:

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the provisions of the act of the Legislature of the State of California (approved April 15, 1919), ceding to the United States exclusive jurisdiction over the territory embraced and included within the Yosemite National Park, Sequoia National Park, and General Grant National Park, respectively, are hereby accepted and sole and exclusive jurisdiction is hereby assumed by the United States over such territory, saving, however, to the said State of California the right to serve civil or criminal process within the limits of the aforesaid parks or either of them in suits or prosecutions for or on account of rights

acquired, obligations incurred, or crimes committed in said State outside of said parks; and saving further to the said State the right to tax persons and corporations, their franchises and property on lands included in said parks, and the rights to fix and collect license fees for fishing in said parks; and saving also to the persons residing in any of said parks now or [30] hereafter the right to vote at all elections held within the county or counties in which said parks are situated. All the laws applicable to places under sole and exclusive jurisdiction of the United States shall have force and effect in said parks or either of them. All fugitives from justice taking refuge in said parks, or either of them, shall be subject to the same laws as refugees from justice found in the State of California.”

VI.

Section 2 of an Act of Congress dated March 4, 1940 (54 Stats. 41), 16 U.S.C.A. 80a, provides as follows:

“Sec. 2. That the General Grant National Park is hereby abolished, and the west half of section 33, township 13 south, range 28 east, and west half of section 4, all of section 8, and the northwest quarter of section 9, township 14 south, range 28 east, Mount Diablo Meridian, California, together with the lands formerly within the General Grant National Park, California, and particularly described as follows to wit: All of sections 31 and 32, Township 13 south, range 28 east and sections 5 and 6, township 14 south, range 28 east, of the same meridian, are, sub-

ject to valid existing rights, hereby added to and made a part of the Kings Canyon National Park, and such lands shall be known as the General Grant grove section of the said park.”

VII.

An Act of the Legislature of the State of California approved April 7, 1943, known as Section 119 of the Government Code of California, provides as follows:

“Cession of exclusive jurisdiction to United States: Lands in Kings Canyon National Park: Reservations: When [31] jurisdiction vests. Exclusive jurisdiction shall be and the same is hereby ceded to the United States over and within all of the territory which is now or may hereafter be included in those several tracts of land in the State of California set aside and dedicated for park purposes by the United States as “Kings Canyon National Park”; saving however to the State of California the right to serve civil or criminal process within the limits of the aforesaid park in suits or prosecutions for or on account of rights acquired, obligations incurred, or crimes committed in said State outside of said park; and saving further to the said State the right to tax persons and corporations, their franchises and property on the lands included in said park, and the right to fix and collect license fees for fishing in said park; and saving also to the persons residing in said park now or hereafter the right to vote at all elections held within the county or counties in which said park is situate.

The jurisdiction granted by this section shall not vest until the United States through the proper officer notifies the State of California that it assumes police jurisdiction over said park.”

VIII.

The following is a letter dated April 21, 1945, from the Secretary of the Interior, Harold L. Ickes, to the Honorable Earl Warren, Governor of California, which was received and signed by the said Governor Earl Warren on April 25, 1945:

“Notice is hereby given, in accordance with the provisions of the act of October 9, 1940 (54 Stat. 1083; 40 U.S.C. Sec. 255), that, effective as of the 1st day of June, 1945, at 12 m., Pacific War Time, the United [32] States accepts exclusive jurisdiction over all lands now included in Kings Canyon National Park. These lands are particularly described in the act of March 4, 1940 (54 Stat. 41), establishing the park, and in proclamation No. 2411, issued by the President of the United States on June 21, 1940 (54 Stat. 2710; 3 CFR, CUM. SUPP., 163), adding certain lands to the park under authority contained in section 2 of the said act.

“Exclusive jurisdiction was ceded to the United States by the act of the Legislature of California, approved April 7, 1943, (Sec. 119 of the Government Code of California) and in accordance with the requirements of this act you are notified that the United States assumes police jurisdiction over the said park as of the date and time above stated.

“It is requested that you endorse the attached duplicate original of this notice of acceptance, indicating the date and time of its receipt, and return it to this Department. There is enclosed for your convenience a self-addressed envelope which requires no postage.”

Said letter was recorded on May 16, 1945, in the office of the County Recorder of the County of Tulare, State of California.

IX.

That there are a large number of small parcels of privately owned land scattered throughout Kings Canyon National Park and other National Parks in California; that the privately owned tracts in Kings Canyon and Sequoia National Parks are set forth on a map attached hereto as Exhibit “C.”

X.

The Secretary of the Interior of the United States on October 24, 1947, published notice (12 Fed. Register 6927) of a proposed rule to govern the sale of intoxicating liquor on private lands in National Parks over which the United States exercises exclusive jurisdiction. [33]

XI.

Pursuant to said notice, the Secretary of the Interior on February 10, 1948, amended Title 36, Code of Federal Regulations, to add Section 12.8 (13 Fed. Register 498-599), providing among other things as follows:

“Sec. 12.8—Intoxicating Liquors. (a) No alcoholic, spirituous, vinous, or fermented liquor, containing more than one percent of alcohol by weight, shall be sold on any privately-owned lands within any of the national parks listed in Sec. 12.1 unless a permit for the sale thereof has first been secured from the appropriate regional director as designated in Secs. 01.30 and 01.82 of this chapter.

“(b) In granting or refusing applications for permits as herein provided, the regional directors shall take into consideration (1) the character of the neighborhood, (2) the availability of other liquor-dispensing facilities, (3) the local laws governing the sale of liquor, and (4) any other local factors which, to their judgment, have a relationship to the privilege requested.

“(c) A fee will be charged for the issuance of such a permit, corresponding to that charged for the exercise of similar privileges outside the national park boundaries by the local State Government, or appropriate political subdivision thereof within whose exterior boundaries the place covered by the permit is situated.

“(d) The applicant or permittee may appeal to the Director, National Park Service, from any final action of the appropriate regional director as designated in Secs. 01.30 and 01.82 of this chapter, refusing, conditioning or revoking the permit. Such an appeal, in writing, shall be filed within twenty days after receipt of notice by [34] the applicant or permittee of the action appealed from. Any

final decision of the Director may be appealed to the Secretary of the Interior within 15 days after receipt of notice by applicant or permittee of the Director's decision."

XII.

The defendants Petersen and Daigle, doing business as "The Lodge," sell alcoholic, spirituous, vinous and/or fermented liquors containing more than one per cent of alcohol by weight.

XIII.

The defendants Petersen and Daigle do not hold, nor have they or their predecessors in interest at "The Lodge," Henry Theodore Petersen and H. L. Edmunds, ever held, a permit from the United States Government or its agencies for the sale of said liquors.

XIV.

On November 26, 1947, defendant Henry Theodore Petersen applied to the Department of the Interior, Park Service, Regional Office, San Francisco, California, for a permit pursuant to the then proposed Section 12.8.

XV.

On March 3, 1948, the said Regional Office denied said application of the said Henry Theodore Petersen; the said defendant Petersen requested a reconsideration of his application and an oral hearing; said request for reconsideration was withdrawn on May 3, 1948; and no appeal from said order of

denial has been taken by the said Henry Theodore Petersen.

XVI.

On or about April 15, 1948, the defendant Henry Theodore Petersen and one H. L. Edmunds applied to the State Board of Equalization of the State of California for seasonal on-sale beer and wine and on-sale distilled spirits licenses, pursuant to the provisions of the Alcoholic Beverage Control Act of the State of California; and thereafter a protest was filed on behalf of the National Park Service, United States Department of the Interior, objecting to [35] the issuance of said licenses, on the ground that the United States claimed exclusive jurisdiction over private lands in Kings Canyon National Park. Said matter was duly and regularly heard by a hearing officer for said Board of Equalization on May 10, 1948, pursuant to the provisions of subdivision (c) of Section 11517 of the Government Code; and thereafter, on or about June 4, 1948, said matter was regularly heard by the Board of Equalization of the State of California; and said matter came on again regularly for hearing before said Board on July 22, 1948, pursuant to notice given to the parties thereto, including the Regional Counsel for the National Park Service; and after consideration thereof, the State Board of Equalization on July 22, 1948, issued the seasonal licenses as applied for. Said licenses have been in effect at all times subsequent to July 22, 1948, and said individuals name, and/or their successors

in interest, the defendants Petersen and Daigle, have been doing business pursuant to said licenses. The establishment operated by said individuals and their successors in interest, the defendants Petersen and Daigle, is known as "The Lodge."

XVII.

By letter dated July 27, 1948, from the Regional Director, National Park Service, San Francisco, to the defendant Henry Theodore Petersen, the National Park Service advised defendant Petersen that the National Park Service did not recognize the jurisdiction of the State Board of Equalization either to grant or deny liquor licenses to applicants whose premises are located within the boundaries of the Kings Canyon National Park, and that the sale of liquor at "The Lodge," Wilsonia Tract, Kings Canyon National Park, without a permit as required by Federal Regulations (13 F. R. 598 and 599; 36 C.F.R. 12.8), would subject said defendant Petersen and his codefendants to prosecution.

XVIII.

"The Lodge" is located in an area of privately-owned property consisting of a residential district known as "Wilsonia Village," composed almost exclusively of mountain summer homes, and is visited by the general [36] public at large.

The properties of the defendants and the properties of the defendants in intervention are located on privately-owned land.

XIX.

Wilsonia Village, as above described, is located within the exterior boundaries of Tulare County, California.

XX.

The nearest police officer, sheriff, or constable of Tulare County, to the Wilsonia Village, is located at Three Rivers, a distance of forty-two miles from "The Lodge." The National Park Service has a Park Ranger Station within one-half mile of "The Lodge."

XXI.

The National Park Service has fire-fighting equipment, consisting of two pump trucks, located in General Grant Grove, approximately one-half mile from Wilsonia Village. Wilsonia Fire District is a district organized under the laws of the State of California, which includes only the privately-owned areas hereinabove and hereinafter described, solely for the purpose of furnishing fire protection to said privately-owned areas; and annual assessments are levied upon the privately-owned lands in said Fire District for such purpose. By agreement between the County of Tulare, said Fire District and the California State Department of Forestry, a fire engine is maintained at Wilsonia for the protection of privately-owned property in said area, including the property of defendants and defendants in intervention, and the assessments levied by said Fire District are devoted to the maintenance and operation of said fire engine.

XXII.

The General Grant Grove section of Kings Canyon National Park is maintained by the United States Government as a recreation area, and it is visited largely by family groups including children.

XXIII.

Less than five families live at Wilsonia the year around and maintain legal residence there. [37]

XXIV.

All of said privately-owned property hereinabove and hereinafter described is within Sierra Union School District in the County of Tulare, State of California, which maintains a school at Badger, in said District.

Up until about 1945, a public school was operated by a State School District at General Grant Grove. Said school was located on government-owned land and attended by children from families residing on both government and privately-owned land. Said school was discontinued when it fell below the required minimum enrollment.

XXV.

There are 243 owners of homes located on said privately-owned land in Wilsonia Village, and defendants in intervention Cutler and Neff represent approximately 63 of said home owners in this proceeding.

XXVI.

Defendant in intervention A. R. Cutler is a citizen and resident of the State of California and is the owner in fee of Lots 109, 110, 112, 113, 114 and 115 in Mesa Addition to Wilsonia Tract, in Section 5, Township 14 South, Range 28 East, Mount Diablo Base & Meridian, according to the map thereof on file and of record in the office of the County Recorder of the County of Tulare, State of California, in Book 17 of Maps, at page 2, and a house and other buildings thereon.

XXVII.

Defendants in intervention Johney D. Neff and Elsa A. Neff, husband and wife, are the owners in fee as joint tenants of Lot 185 of said Mesa Addition to Wilsonia Tract, in Section 5, Township 14 South, Range 28 East, Mount Diablo Base & Meridian, according to the map thereof on file and of record in the office of the County Recorder of the County of Tulare, State of California, in Book 17 of Maps, at page 2, except the north 25 feet of said lot used for road purposes, and a house and other structures thereon, and they make their home on and are permanent residents of said Lot 185 and are citizens of the State of California. Said defendants in intervention Johney D. Neff and Elsa A. Neff vote [38] in Eshom voting precinct of the County of Tulare, State of California, which includes all of the privately-owned lands herein described and the polling place of which is at Sierra Union District School at Badger, Tulare County, California, that Gov-

ernment employees and others residing within Kings Canyon National Park vote at general county and state elections at said polling place, that a copy of the Voters Register of Tulare County is attached hereto marked Exhibit "D."

XXVIII.

That Government employees and others residing within Sequoia National Park vote at general county and state elections at Three Rivers in Tulare County.

XXIX.

That there are three polling places located on Government land within Yosemite National Park, two in Yosemite Valley and one at Wawona, where approximately 200 Government employees and approximately 200 Park Company employees and civilians, are registered to vote, that a certified copy of the Voters Register of Mariposa County is attached hereto as Exhibit "E."

XXX.

The defendants in intervention A. R. Cutler, Johney D. Neff and Elsa A. Neff do not own, have no interest in, and have never been in possession of "The Lodge," the business carried on therein, or the land and buildings upon which it is located.

XXXI.

Any party to this stipulation may object to the introduction in evidence of any fact stated in this

stipulation in paragraphs XIV, XV, XVI, XX, XXI, and XXVIII and XXIX hereof, upon the ground that it is incompetent, irrelevant or immaterial.

XXXII.

This stipulation shall not prevent any party thereto from introducing in evidence any fact not herein agreed upon which is admissible under the rules of evidence, providing that notice of intent to introduce any such evidence be served upon the other parties on or before five days before the date fixed for trial. [39]

XXXIII.

The defendants and the defendants in intervention Cutler and Neff claim and contend that if the statutes hereinabove referred to have the effect of ceding exclusive jurisdiction by the State of California to the United States of America over the privately-owned lands hereinabove described, they are void and in violation of the Constitution of the United States and the Constitution of the State of California. Said defendants and defendants in intervention also claim and contend that the Secretary of the Interior has no power to make or issue regulations governing or affecting the said privately-owned lands hereinabove described. Nothing in this stipulation shall be deemed to be a waiver of those claims and contentions.

Dated: This 26th day of November, 1949.

ERNEST A. TOLIN,
United States Attorney.

CLYDE C. DOWNING,
Assistant U. S. Attorney
Chief, Civil Division.

MAX F. DEUTZ,
Assistant U. S. Attorney.

By /s/ MAX F. DEUTZ,
Attorneys for Plaintiff.

GEORGE, WINKLER AND
GIBBS,

By /s/ ELMORE WINKLER,
Attorneys for Defendants
Petersen, et al.

FRED N. HOWSER,
Attorney General of the
State of California.

BAYARD RHONE,
Deputy Attorney General.

By /s/ BAYARD RHONE,
Attorneys for Defendant in Intervention State of
California.

STAMMER & McKNIGHT,

By /s/ W. H. STAMMER,
Attorneys for Defendants in Intervention A. R.
Cutler, et al.

At a stated term, to wit: The October Term A. D. 1949, of the District Court of the United States of America, within and for the Northern Division of the Southern District of California, held at the Court Room thereof, in the City of Fresno on Tuesday the 6th day of December in the year of our Lord one thousand nine hundred and forty-nine.

Present: The Honorable Wm. C. Mathes,
District Judge.

[Title of Cause.]

ORDER CAUSE SUBMITTED ON BRIEFS

For hearing motion of defendants in intervention, A. R. Cutler, et al., filed Nov. 30, 1949, for order permitting said defendants to file amendment to their answer in intervention; Max F. Deutz, Ass't U. S. Att'y, appearing as counsel for Gov't.; Elmore Winkler, Esq., appearing as counsel for defendants Petersen, et al.; Bayard Rhone, Deputy Att'y Gen'l of State of Calif., appearing as counsel for defendant in intervention, the State of California; and W. H. Stammer, Esq., appearing as counsel for defendants in intervention, A. R. Cutler, et al.;

Attorney Stammer makes a statement re filing of amendment to their answer in intervention, and Court grants the said motion, and orders that amendment to answer in intervention of A. R. Cutler, et al., be filed.

Stipulation of facts for purposes of trial, filed Dec. 5, 1949, is admitted into evidence as Gov't Ex. 1. Gov't Ex. 1-A, 1-B, 1-C, 1-D, and 2 are ad-

mitted in evidence. Gov't rests at 10:43 p.m. Defense also rests.

At 10:47 a.m. Attorney Deutz argues to the Court. At 11:12 a.m. court recesses for five minutes.

At 11:35 a.m. court reconvenes herein and all being present as before, including counsel for both sides; [41]

Attorney Rhone argues to the Court, Attorney Winkler argues to the Court, and at noon Attorney Stammer argues to the Court. Court makes a statement.

Court orders cause submitted on briefs; Gov't to file opening brief by Dec. 23, 1949; the State of California, defendant and intervener, allowed to Jan. 10, 1950, to reply; and Gov't to file closing brief by Jan. 20, 1950, if so advised; the case then to stand submitted. [42]

United States District Court for the
Southern District of California
Central Division

No. 849 ND Civ.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

HARRY THEODORE PETERSEN, et al.,

Defendants.

STATE OF CALIFORNIA,

Defendant in Intervention,

A. E. CUTLER, et al.,

Defendants in Intervention.

MEMORANDUM OF DECISION

By this action the United States seeks [1] a declaratory judgment decreeing that the federal government has exclusive police jurisdiction over privately owned lands located within the boundaries of Kings Canyon National Park and [2] a writ of injunction restraining sale of liquor upon [43] such private property without prescribed federal permit. [28 U.S.C. §§ 1345, 2201.] The cause is submitted for decision upon an agreed statement of facts.

National Park Service regulations issued pursuant to statute by the Secretary of the Interior [36 Code Fed. Regs. § 12.8 (1949); see 39 Stat. 535 (1916), 16 U.S.C. § 3] provide that “no alcoholic

. . . liquor, containing more than one per cent of alcohol by weight, shall be sold on any privately-owned [sic] lands within . . . [Kings Canyon National Park] unless a permit for the sale thereof has first been secured from the . . . regional director."

Defendants sell liquor "containing more than one per cent of alcohol by weight" at their establishment, "The Lodge," located in "Wilsonia Village" on a tract of privately owned land within the boundaries of General Grant grove section of the park. Their application for a federal permit was refused by the regional director, but defendants hold a seasonal on-sale liquor license from the California State Board of Equalization. Against the assertion that the United States has exclusive jurisdiction to regulate the sale of liquor on their land, defendants continue to sell under claimed authority of state license. [44]

Thus an "actual controversy," justiceable in this court, exists between the United States and the defendants. [28 U.S.C. § 2201; *Aetna Life Ins. Co. v. Haworth*, 300 U.S. 227 (1937); cf. *Eccles v. Peoples Bank*, 333 U.S. 426 (1948).] Other residents and owners of land in "Wilsonia Village" have now intervened in the action, as has the State of California. [Fed. R. Civ. P. 24(b).]

By Act of March 4, 1940 [54 Stat. 41, 16 U.S.C. § 80] the Congress "dedicated and set apart as a public park, to be known as the Kings Canyon National Park," a tract of land located in California. General Grant National Park [see 41 Stat. 731 (1920); Cal. Stats. 1919, c. 51] was abolished and the area within

it was, "subject to valid existing rights, . . . added to and made a part of the Kings Canyon National Park"—the "General Grant grove section of the said park." [54 Stat. 43, 16 U.S.C. § 80a.] This congressional enactment establishing the park included lands owned by defendants and the individual intervenors within the boundaries of the area so "dedicated and set apart as a public park."

California thereafter ceded to the United States "exclusive jurisdiction . . . over and within all [45] of the territory which is now or may hereafter be included in those several tracts of land in the State of California set aside and dedicated for park purposes by the United States as 'Kings Canyon National Park'; saving however . . . the right to serve . . . process . . . the right to tax persons and corporations, their franchises and property on the lands included . . . and the right to fix and collect license fees for fishing in said park; and saving also to the persons residing in said park now or hereafter the right to vote at all elections held within the county or counties in which said park is situate"; the jurisdiction thereby granted to vest when "the United States through the proper officer notifies the State of California that it assumes police jurisdiction over said park." [Cal. Stats. 1943, c. 96, § 2, Cal. Gov. Code § 119.]

By letter of April 21, 1945, to the Governor of California, the Secretary of the Interior accepted on behalf of the United States "exclusive jurisdiction over all the lands now included in Kings Canyon National Park" and gave notice that the United

States then assumed "police jurisdiction over the said park." [See 54 Stat. 1083 (1940), 40 U.S.C. § 255.] [46]

California thus purported to cede to the United States police jurisdiction "over and within all of the territory . . . included in those several tracts of land set aside and dedicated for park purposes . . . as 'Kings Canyon National Park.'" And the Secretary of the Interior then purported to accept on behalf of the United States "exclusive jurisdiction over all the lands now included in Kings Canyon National Park."

The Government urges that exclusive police jurisdiction of the United States over all lands included within the boundaries of Kings Canyon National Park, both publicly and privately owned, is established by this agreement between the United States and California. [Collins v. Yosemite Park Co., 304 U.S. 518, 529 (1938).]

Neither in the congressional act of dedication, nor in the legislative act of cession, nor in the executive act of acceptance, is any mention made of privately owned tracts of land such as "Wilsonia Village." Admittedly the lands owned by defendants and the individual intervenors are not "set aside and dedicated for park purposes" [see 54 Stat. 41, 43 (1940), 16 U.S.C. §§ 80, 80a]; but it is equally beyond [47] question that "Wilsonia Village" is, in the language of the California Legislature, "included in those several tracts of land in the State of California set aside and dedicated for park purposes by

the United States as 'Kings Canyon National Park.' "

Although 54 Stat. 1083 (1940), 40 U.S.C. § 255, pursuant to which the Secretary of the Interior acted on behalf of the United States, authorizes the head of a department only to accept "cession of . . . jurisdiction, exclusive or partial, not heretofore obtained, over . . . lands or interests [under his immediate jurisdiction, custody, or control] . . .," this statute merely provides a method of accepting a cession of jurisdiction *Adams v. United States*, 319 U.S. 312, 314 (1943)] and is not to be construed to limit either as to character or ownership the lands over which federal jurisdiction may be assumed.

It seems clear therefore that California intended to cede and the United States intended to accept exclusive police jurisdiction over the privately owned lands in question. [*United States v. Unzeuta*, 281 U.S. 138, 143 (1930); cf. *Arlington Hotel Co. v. Fant*, 278 U.S. 439 (1929); [48] *Fort Leavenworth R.R. v. Lowe*, 114 U.S. 525 (1885).]

Defendants and intervenors contend however that California cannot by compact constitutionally cede, and that the United States cannot constitutionally accept exclusive jurisdiction over lands in California to which the United States has no title.

The Constitution of California permits such a cession of jurisdiction by the state. [See *Johnson v. Morrill*, 20 Cal. 2d 446, 126 P. 2d 873, 877 (1942); *Standard Oil Co. v. Johnson*, 10 Cal. 2d 758, 76 P. 2d 1184, 1188 (1938); cf. *Fort Leavenworth R.R. v.*

Lowe, *supra*, 114 U.S. 525, 541; *Chicago & Pac. Ry. v. McGlinn*, 114 U.S. 542, 546 (1885); *Rhode Island v. Massachusetts*, 12 Pet. (37 U.S.) 657, 725 (1838).]

The Constitution of the United States expressly grants exclusive federal "authority over all places purchased . . . for the erection of forts . . . and other needful buildings." [U.S. Const. Art. I, § 8, cl. 17; see Madison, *Journal of the Constitutional Convention* 662 (Scott ed. 1893).] And it is now settled that the federal government may by compact with a state assume exclusive police jurisdiction over any federal lands [49] within the state. [*Collins v. Yosemite Park Co.*, *supra*, 304 U.S. 518, 529; *Fort Leavenworth R.R. v. Lowe*, *supra*, 114 U.S. 525.]

Moreover it is held that where "necessary in order to secure the benefits intended to be derived" from federal lands, acceptance of exclusive police jurisdiction by the United States may extend to privately owned land. [*United States v. Unzeuta*, *supra*, 281 U.S. 138, 145; cf. *Arlington Hotel Co. v. Fant*, *supra*, 278 U.S. 439.] Since the privately owned land at bar is entirely surrounded by public lands dedicated for national park purposes "to conserve the scenery and the natural and historic objects and the wildlife therein" [39 Stat. 535 (1916), 16 U.S.C. § 1], the conclusion follows that acceptance by the United States of exclusive police jurisdiction over such privately owned land was "necessary in order to secure the benefits intended to be derived" from the park.

The individual intervenors urge that the effect

of so holding will deprive them of their right to vote and other state rights, including their right to state fire protection, without due process of law. But California's cession of [50] jurisdiction expressly saved the voting rights of persons residing in the park. It does not befall this court to "labor to find an inference which would deprive them of the right of suffrage." [Johnson v. Morrill, *supra*, 20 Cal. 2d 446, 126 P. 2d 873, 877.] As to the loss of state rights such as fire protection, the federal government is always charged with the duty of protecting rights and property of its citizens [see *Helvering v. Gerhardt*, 304 U.S. 405, 412 (1938)], so there is no lack of due process here. [cf. *Rhode Island v. Massachusetts*, *supra*, 12 Pet. (37 U.S.) 657, 725.]

The United States had authority to and did accept from California cession of exclusive police jurisdiction over the privately owned lands in controversy [United States v. Unzeuta, *supra*, 281 U.S. 138]; and is entitled to judgment so decreeing.

The Government also prays for an injunction restraining defendants from selling liquor at "The Lodge" without federal permit. The United States would be entitled to the injunction sought, if such a remedy were necessary to prevent irreparable injury to federal property rights, to protect the [51] general welfare or to abate a public nuisance. [Light v. United States, 220 U.S. 523 (1911); *In re Debs*, 158 U.S. 564, 583-587 (1895).]

However, criminal sanctions are provided for violation of National Park Service regulations [36 Code Fed. Regs. §§ 1-34] issued by the Secretary of

the Interior [39 Stat. 535 (1916), as amended, 16 U.S.C. § 3], and such regulations have the force of law. [See *Yakus v. United States*, 321 U.S. 414, 435 (1944).] It does not appear that the acts of defendants at bar constitute anything more than a violation of such regulations. The criminal remedy at law is therefore adequate. [cf. *Hecht Co. v. Bowles*, 321 U.S. 321 (1944).]

While existence of another adequate remedy does not preclude declaratory relief [Fed. R. Civ. P. 57; *Delno v. Market St. Ry.*, 124 F. 2d 965, 968 (9th Cir. 1942)], the extraordinary remedy of injunction is not warranted where as here there is an adequate criminal remedy. [*Milliken v. Stone*, 16 F. 2d 981, 983 (2d Cir. 1927), cert. denied, 274 U.S. 748 (1927); cf. *In re Debs*, supra, 158 U.S. 564, 593; see Chafee, *Progress in the Law—Equitable Relief Against Torts*, 34 Harv. L. Rev. 388, 398-405 (1921).] Accordingly the prayer [52] for an injunction will be denied.

Solicitors for plaintiff will submit findings of fact, conclusions of law and form of declaratory judgment pursuant to local rule 7 within ten days.

June 22, 1950.

/s/ WM. C. MATHES,

United States District Judge.

[Endorsed]: Filed June 22, 1950.

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS
OF LAW

This cause came on regularly for trial before the Court sitting without a jury on December 6, 1949, Ernest A. Tolin, United States Attorney, Clyde C. Downing and Max F. Deutz, Assistant United States Attorneys, appearing as attorneys for the plaintiffs, George, Winkler and Gibbs by Elmore W. Winkler appearing for the defendants Harry Theodore Petersen, et al., Fred N. Howser, Attorney General of the State of California by Bayard Rhone appearing for the defendant in intervention, the State of California, and Stammer and McKnight by W. H. Stammer appearing for the defendants in intervention, A. R. Cutler, et al., and the parties having stipulated to all of the facts in this proceeding, and the Court having examined the stipulations of fact and the exhibits offered by the parties, and the Court being fully advised in the premises, finds the facts to be as follows: [54]

Findings of Fact

I.

That this action is brought by the United States of America, and that the jurisdiction of this Court arises, under the provisions of Title 28, Section 1345 of the United States Code; that an actual controversy between the parties exists.

II.

That the defendants Henry Theodore Petersen, Ida Petersen, Clayton Leon Daigle and Azile Carol Daigle are a copartnership which does now operate, and has for some time past operated, a cocktail lounge and restaurant known as "The Lodge," wherein spirituous and intoxicating liquors, beer, wine and food are sold to the public.

III.

That the defendants Petersen and Daigle are citizens and residents of the State of California and are the successors in interest of a partnership consisting of Henry Theodore Petersen and H. L. Edmunds, which formerly owned and operated "The Lodge."

IV.

That "The Lodge" is located on Lots 11, 12 and 13 of Block 13 of Wilsonia Tract, in Section 5, Township 14 South, Range 28 East, Mount Diablo Base and Meridian, in the County of Tulare, State of California, according to the map thereof on file and of record in the office of the County Recorder of said County of Tulare, State of California, in Book 16, of Maps, at page 20. The defendants Petersen and Daigle are in possession of the above described real property and the buildings thereon. That said defendants Petersen also own Lot A of said Wilsonia Tract. Wilsonia Tract, Mesa Addition to Wilsonia Tract, and Sierra Masonic Family Club Tract are residence tracts located on approxi-

mately 120 acres of land within Section 5, Township 14 South, Range 28 East, Mount Diablo Base and Meridian, and are known generally as "Wilsonia Village." The lands upon which said tracts are situate are a part of a tract of 160 acres in said Section 5 which was originally patented by the United States Government on October 15, 1891, to one Daniel M. Perry. The area included in said Wilsonia Tract, Mesa Addition to Wilsonia Tract and Sierra [55] Masonic Family Club Tract has remained in private ownership since the issuance of said patent, and said tracts have been divided into approximately 500 parcels. The real property of the defendants hereinabove described and the real property of intervenors A. R. Cutler, John D. Neff and Elsa A. Neff, et al., hereinafter described has been at all times since the issuance of said patent, and now is, in private ownership; and at all times since 1891 none of said Wilsonia Tract, or Mesa Addition to Wilsonia Tract, or Sierra Masonic Family Club Tract has ever been, or now is, owned by the United States of America, except for the southerly portions of Lots 132, 133, 134, 135, 136, 137, 138, 140, 155, 156, 157, 158, 186, 167, 171, 172, 177B, 177A, deeded to private owners by the United States of America, pursuant to 56 Stat. 310. Exhibit "1-A" in Evidence is a map of the said 120-acre area, showing said Wilsonia Tract, Mesa Addition to Wilsonia Tract, and Sierra Masonic Family Club Tract. Exhibit "1-B" in Evidence is a map of Section 5, showing thereon the tract of approximately 160 acres originally patented by the United States

Government on October 15, 1891, to Daniel M. Perry showing thereon the areas included in Wilsonia Tract, Mesa Addition to Wilsonia Tract and Sierra Masonic Family Club Tract, and two tracts of land formerly in private ownership which have been purchased, and are now owned, by the United States.

V.

That an Act of the Legislature of the State of California approved April 15, 1919 (Cal. Statutes 1919, Ch. 51, Sec. 1), provides as follows:

“Section 1. Exclusive jurisdiction shall be and the same is hereby ceded to the United States over and within all of the territory which is now or may hereafter be included in those several tracts of land in the State of California set aside and dedicated for park purposes by the United States as “Yosemite national park,” “Sequoia national park,” and “General Grant national park,” respectively; saving, however, to the State of California [56] the right to serve civil or criminal process within the limits of the aforesaid parks in suits or prosecutions for or on account of rights acquired, obligations incurred or crimes committed in said state outside of said parks; and saving further, to the said state the right to tax persons and corporations, their franchises and property on the lands included in said parks, and the right to fix and collect license fees for fishing in said parks; and saving also to the persons residing in any of said parks now or hereafter the right to vote at all elections held within the county or counties in

which said parks are situate; provided, however, that jurisdiction shall not vest until the United States through the proper officer notifies the State of California that they assume police jurisdiction over said parks.”

VI.

That an Act of Congress of June 2nd, 1920 (41 Stats. 731), 16 U.S.C.A. 57, provides as follows:

“Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the provisions of the act of the Legislature of the State of California (approved April 15, 1919), ceding to the United States exclusive jurisdiction over the territory embraced and included within the Yosemite National Park, Sequoia National Park, and General Grant National Park, respectively, are hereby accepted and sole and exclusive jurisdiction is hereby assumed by the United States over such territory, saving, however, to the said State of California the right to serve civil or criminal process within the limits of the aforesaid parks or either of them in suits or prosecutions for or on account of rights acquired, obligations [57] incurred, or crimes committed in said State outside of said parks; and saving further to the said State the right to tax persons and corporations, their franchises and property on lands included in said parks, and the right to fix and collect license fees for fishing in said parks; and saving also to the persons residing in any of said parks now or hereafter the right to vote at all elections held within the county

or counties in which said parks are situated. All the laws applicable to places under sole and exclusive jurisdiction of the United States shall have force and effect in said parks or either of them. All fugitives from justice taking refuge in said parks, or either of them, shall be subject to the same laws as refugees from justice found in the State of California."

VII.

That Section 2 of an Act of Congress dated March 4, 1940 (54 Stats. 41), 16 U.S.C.A. 80a, provides as follows:

"Sec. 2. That the General Grant National Park is hereby abolished, and the west half of section 33, township 13 south, range 28 east, and west half of section 4, all of section 8, and the northwest quarter of section 9, township 14 south, range 28 east, Mount Diablo Meridian, California, together with the lands formerly within the General Grant National Park, California, and particularly described as follows, to-wit: All of sections 31 and 32, township 13 south, range 28 east, and sections 5 and 6, township 14 south, range 28 east, of the same meridian, are, subject to valid existing rights, hereby added to and made a part of the Kings Canyon National Park, and such lands shall be known as the General Grant Grove section of said park." [58]

VIII.

That an Act of the Legislature of the State of California approved April 7, 1943, known as Sec-

tion 119 of the Government Code of California, provides as follows:

“Cession of exclusive jurisdiction to United States: Lands in Kings Canyon National Park: Reservations: When jurisdiction vests. Exclusive jurisdiction shall be and the same is hereby ceded to the United States over and within all of the territory which is now or may hereafter be included in those several tracts of land in the State of California set aside and dedicated for park purposes by the United States as “Kings Canyon National Park;” saving however to the State of California the right to serve civil or criminal process within the limits of the aforesaid park in suits or prosecutions for or on account of rights acquired, obligations incurred, or crimes committed in said State outside of said park; and saving further to the said State the right to tax persons and corporations, their franchises and property on the lands included in said park, and the right to fix and collect license fees for fishing in said park; and saving also to the persons residing in said park now or hereafter the right to vote at all elections held within the county or counties in which said park is situate. The jurisdiction granted by this section shall not vest until the United States through the proper officer notifies the State of California that it assumes police jurisdiction over said park.”

IX.

That the following is a letter dated April 21, 1945, from the Secretary of the Interior, Harold L. Ickes,

to the Honorable Earl Warren, [59] Governor of California, which was received and signed by the said Governor Earl Warren on April 25, 1945:

“Notice is hereby given, in accordance with the provisions of the act of October 9, 1940 (54 Stat. 1083; 40 U.S.C. Sec. 255) that, effective as of the 1st day of June, 1945, at 12 m., Pacific War Time, the United States accepts exclusive jurisdiction over all lands now included in Kings Canyon National Park. These lands are particularly described in the act of March 4, 1940 (54 Stat. 41), establishing the park, and in proclamation No. 2411, issued by the President of the United States on June 21, 1940 (54 Stat. 2710; 3 CFR, CUM. SUPP., 163), adding certain lands to the park under authority contained in section 2 of the said act.

“Exclusive jurisdiction was ceded to the United States by the act of the Legislature of California, approved April 7, 1943 (Sec. 119 of the Government Code of California) and in accordance with the requirements of this act you are notified that the United States assumes police jurisdiction over the said park as of the date and time above-stated.

“It is requested that you endorse the attached duplicate original of this notice of acceptance, indicating the date and time of its receipt, and return it to this Department. There is enclosed for your convenience a self-addressed envelope which requires no postage.”

Said letter was recorded on May 16, 1945, in the office of the County Recorder of the County of Tulare, State of California.

X.

That there are a large number of small parcels of privately owned land scattered throughout Kings Canyon National Park and other National Parks in California; that the privately owned tracts in Kings Canyon and Sequoia National Parks are set forth on a map admitted in evidence as Exhibit "1-C."

XI.

That the Secretary of the Interior of the United States on October 24, 1947, published notice (12 Fed. Register 6927) of a proposed rule to govern the sale of intoxicating liquors on private lands in National Parks over which the United States exercises exclusive jurisdiction.

XII.

That pursuant to said notice, the Secretary of the Interior on February 10, 1948, amended Title 36, Code of Federal Regulations, to add Section 12.8 (13 Fed. Register 498-599), providing among other things as follows:

"Sec. 12.8—Intoxicating Liquors. (a) No alcoholic, spirituous, vinous, or fermented liquor, containing more than one per cent of alcohol by weight, shall be sold on any privately-owned lands within any of the national parks listed in Sec. 12.1 unless a permit for the sale thereof has first been secured from the appropriate regional director as designated in Secs. 01.30 and 01.82 of this chapter.

“(b) In granting or refusing applications for permits as herein provided, the regional directors shall take into consideration (1) the character of the neighborhood, (2) the availability of other liquor-dispensing facilities, (3) the local laws governing the sale of liquor, and (4) any other local factors which, to their judgment, have a relationship to the privilege requested.

“(c) A fee will be charged for the issuance of such a permit, corresponding to that charged for the exercise of similar privileges outside the national park boundaries by the local State Government, or appropriate political subdivision thereof within whose exterior boundaries the place covered by the permit is situated. [61]

“(d) The applicant or permittee may appeal to the Director, National Park Service, from any final action of the appropriate regional director as designated in Secs. 01.30 and 01.82 of this chapter, refusing, conditioning or revoking the permit. Such an appeal, in writing, shall be filed within twenty days after receipt of notice by the applicant or permittee of the action appealed from. Any final decision of the Director may be appealed to the Secretary of the Interior within 15 days after receipt of notice by applicant or permittee of the Director’s decision.”

XIII.

That the defendants Petersen and Daigle, doing business as “The Lodge,” sell alcoholic, spirituous,

vinous and fermented liquors containing more than one per cent of alcohol by weight.

XIV.

That the defendants Petersen and Daigle do not hold, nor have they or their predecessors in interest at "The Lodge," Henry Theodore Petersen and H. L. Edmunds, ever held, a permit from the United States Government or its agencies for the sale of said liquors.

XV.

That on November 26, 1947, defendant Henry Theodore Petersen applied to the Department of the Interior, Park Service, Regional Office, San Francisco, California, for a permit pursuant to the then proposed Section 12.8.

XVI.

That on March 3, 1948, the said Regional Office denied said application of the said Henry Theodore Petersen; the said defendant Petersen requested a reconsideration of his application and an oral hearing; said request for reconsideration was withdrawn on May 3, 1948; and no appeal from said order of denial has been taken by the said Henry Theodore Petersen. [62]

XVII.

That on or about April 15, 1948, the defendant Henry Theodore Petersen and one H. L. Edmunds applied to the State Board of Equalization of the

State of California for seasonal on-sale beer and wine and on-sale distilled spirits licenses, pursuant to the provisions of the Alcoholic Beverage Control Act of the State of California; and thereafter a protest was filed on behalf of the National Park Service, United States Department of the Interior, objecting to the issuance of said licenses, on the ground that the United States claimed exclusive jurisdiction over private lands in Kings Canyon National Park. Said matter was duly and regularly heard by a hearing officer for said Board of Equalization on May 10, 1948, pursuant to the provisions of subdivision (c) of Section 11517 of the Government Code; and thereafter, on or about June 4, 1948, said matter was regularly heard by the Board of Equalization of the State of California; and said matter came on again regularly for hearing before said Board on July 22, 1948, pursuant to notice given to the parties thereto, including the Regional Counsel for the National Park Service; and after consideration thereof, the State Board of Equalization on July 22, 1948, issued the seasonal licenses as applied for. Said licenses have been in effect at all times subsequent to July 22, 1948, and said individuals named, and their successors in interest, the defendants Petersen and Daigle, have been doing business pursuant to said licenses. The establishment operated by said individuals and their successors in interest, the defendants Petersen and Daigle, is known as "The Lodge."

XVIII.

That by letter dated July 27, 1948, from the Regional Director, National Park Service, San Francisco, to the defendant Henry Theodore Petersen, the National Park Service advised defendant Petersen that the National Park Service did not recognize the jurisdiction of the State Board of Equalization either to grant or deny liquor licenses to applicants whose premises are located within the boundaries of the Kings Canyon National Park, and that the sale of liquor at "The Lodge," Wilsonia Tract, Kings Canyon National Park, [63] without a permit as required by Federal Regulations (13 F.R. 598 and 599; 36 C.F.R. 12.8), would subject said defendant Petersen and his codefendants to prosecution.

XIX.

That "The Lodge" is located in an area of privately-owned property consisting of a residential district known as "Wilsonia Village," composed almost exclusively of mountain summer homes, and is visited by the general public at large.

The properties of the defendants and the properties of the defendants in intervention are located on privately-owned land.

XX.

That Wilsonia Village, as above described, is located within the exterior boundaries of Tulare County, California.

XXI.

That the National Park Service has fire-fighting equipment, consisting of two pump trucks, located in General Grant Grove, approximately one-half mile from Wilsonia Village. Wilsonia Fire District is a district organized under the laws of the State of California, which includes only the privately-owned areas hereinabove and hereinafter described, solely for the purpose of furnishing fire protection to said privately-owned areas; and annual assessments are levied upon the privately-owned lands in said Fire District for such purpose. By agreement between the County of Tulare, said Fire District and the California State Department of Forestry, a fire engine is maintained at Wilsonia for the protection of privately-owned property in said area, including the property of defendants and defendants in intervention, and the assessments levied by said Fire District are devoted to the maintenance and operation of said fire engine.

XXII.

That General Grant Grove section of Kings Canyon National Park is maintained by the United States Government as a recreation area, and it is visited largely by family groups including children.

XXIII.

That less than five families live at Wilsonia the year around and maintain legal residence there.

XXIV.

That all of said privately-owned property hereinabove and hereinafter described is within Sierra Union School District in the County of Tulare, State of California, which maintains a school at Badger, in said District.

Up until about 1945, a public school was operated by a State School District at General Grant Grove. Said school was located on government-owned land and attended by children from families residing on both government- and privately-owned land. Said school was discontinued when it fell below the required minimum enrollment.

XXV.

That there are 243 owners of homes located on said privately-owned land in Wilsonia Village, and defendants in intervention Cutler and Neff represent approximately 63 of said home owners in this proceeding.

XXVI.

That defendant in intervention A. R. Cutler is a citizen and resident of the State of California and is the owner in fee of Lots 109, 110, 112, 113, 114 and 115 in Mesa Addition to Wilsonia Tract, in Section 5, Township 14 South, Range 28 East, Mount Diablo Base & Meridian, according to the map thereof on file and of record in the office of the County Recorder of the County of Tulare, State of California, in Book 17 of Maps, at page 2, and a house and other buildings thereon.

XXVII.

That defendants in intervention Johney D. Neff and Elsa A. Neff, husband and wife, are the owners in fee as joint tenants of Lot 185 of said Mesa Addition to Wilsonia Tract, in Section 5, Township 14 South, Range 28 East, Mount Diablo Base & Meridian, according to the map thereof on file and of record in the office of the County Recorder of the County of Tulare, State of California, in Book 17 of Map, at page 2, except the north 25 feet [65] of said lot used for road purposes, and a house and other structures thereon, and they make their home on and are permanent residents of said Lot 185 and are citizens of the State of California. Said defendants in intervention Johney D. Neff and Elsa A. Neff vote in Eshom voting precinct of the County of Tulare, State of California, which includes all of the privately-owned lands herein described and the polling place of which is at Sierra Union District School at Badger, Tulare County, California, that Government employees and others residing within Kings Canyon National Park vote at general county and state elections at said polling place, that a copy of the Voters Register of Tulare County is admitted in evidence as Exhibit "1-D."

XXVIII.

That Government employees and others residing within Sequoia National Park vote at general county and state elections at Three Rivers in Tulare County.

XXIX.

That the defendants in intervention A. R. Cutler, Johnney D. Neff and Elsa A. Neff do not own, have no interest in, and have never been in possession of "The Lodge," the business carried on therein, or the land and buildings upon which it is located.

XXX.

That the defendant in intervention A. R. Cutler is now, and has been for several years prior to the commencement of this action, over the age of twenty-one years, a citizen of the United States, a resident of the State of California and of the County of Tulare in said State, able to read the Constitution of the State of California in the English language and to write his name, and he is not an idiot or insane person and has not been convicted of any infamous crime or of the embezzlement or misappropriation of public money.

XXXI.

That the defendants in intervention Johnney D. Neff and Elsa A. Neff are, and have been for several years prior to the commencement of this action, citizens of the United States, residents of the State of [66] California and of the County of Tulare in said State, and residents of Eshom Voting Precinct in said County of Tulare. Each of said defendants in intervention is over the age of twenty-one years, able to read the Constitution of the State of California in the English language and to write his or

ner name, and neither of said defendants in intervention is an idiot or insane person or has been convicted of any infamous crime or of the embezzlement or misappropriation of public money.

XXXII.

That a bona fide entry of the 160 acres in said Section 5, Township 14 South, Range 28 East, Mount Diablo Base and Meridian, 120 acres of which were later subdivided as Wilsonia Tract, Mesa Addition to Wilsonia Tract and Sierra Masonic Family Club Tract, was made by Daniel M. Perry prior to October 1st, 1890; and said land so entered by him was the land patented to him by the United States Government on October 15, 1891.

XXXIII.

That Congress reserved and withdrew from settlement all government-owned lands in General Grant Park, including said Section 5, by an Act of Congress of October 1, 1890 (26 St., Ch. 1263, Sec. 3, P. 650).

XXXIV.

That cession by the State of California and acceptance by the United States of exclusive police jurisdiction over the privately-owned land, known as "Wilsonia Village," located in Section 5, Township 14 South, Range 28 East, Mount Diablo Base and Meridian, and lying within the boundaries of Kings Canyon National Park, was at the time of such cession and now is necessary in order to secure

the benefits intended to be derived from the publicly-owned land dedicated and set aside for park purposes as Kings Canyon National Park.

Conclusions of Law

From the Foregoing Findings of Fact the Court makes the following Conclusions of Law:

I.

That the State of California has ceded to the United States of America exclusive jurisdiction over all territory, publicly and privately owned, within [67] the exterior boundaries of Kings Canyon National Park, saving, however, those certain incidents of jurisdiction specifically reserved in the statute of cession, Section 119 of the Government Code of California, enacted April 7, 1943.

II.

That the United States of America has accepted exclusive jurisdiction over all territory, publicly and privately owned, within the exterior boundaries of Kings Canyon National Park, saving to the State of California, however, those certain incidents of jurisdiction specifically reserved in the said statute of cession.

III.

That the State of California has the power, under the Constitution of the State of California and under the Constitution of the United States, to cede such jurisdiction to the United States of America.

IV.

That the United States Government has the power under the United States Constitution to accept such cession of jurisdiction from the State of California.

V.

That by the cession of such jurisdiction by the State of California and by acceptance of such jurisdiction by the United States of America, the United States Government derived exclusive police jurisdiction over all that territory, both publicly and privately owned, lying within the exterior boundaries of Kings Canyon National Park.

VI.

That as a part of its police jurisdiction, the United States Government through the Secretary of the Interior and the National Park Service, may promulgate rules and regulations for the maintenance of law and order within Kings Canyon National Park.

VII.

That the regulations governing the sale of liquor on privately-owned property within Kings Canyon National Park are a proper exercise of said police jurisdiction. [68]

VIII.

That Harry Theodore Petersen, Ida Petersen, Clayton Leon Daigle and Azile Carol Daigle as owners and operators of "The Lodge," are required

by Section 12.8 of Title 36, Code of Federal Regulations, to procure a permit for the sale of alcoholic, spirituous, vinous or fermented liquors from the National Park Service before offering the same for sale to the public.

IX.

That the State of California, having ceded exclusive police jurisdiction over all the territory lying within the exterior boundaries of Kings Canyon National Park, has no jurisdiction to require a liquor license from, or issue such license to, the defendants Petersen and Daigle as operators of "The Lodge."

X.

That the cession of exclusive police jurisdiction by the State of California, and the acceptance thereof by the United States of America, expressly saves the voting rights of persons residing in Kings Canyon National Park.

XI.

That the United States of America, the plaintiff herein, has an adequate criminal remedy for the violation of the regulations of the National Park Service which have the force of law.

XII.

That the extraordinary remedy of injunction is not warranted.

XIII.

That the plaintiff United States of America is

entitled to its costs and disbursements incurred or expended herein.

Let Judgment be entered accordingly.

Dated this 15th day of July, 1950.

WM. C. MATHES,

United States District Judge.

Affidavit of Service by Mail attached.

Lodged June 30, 1950.

[Endorsed]: Filed July 17, 1950. [69]

In the United States District Court in and for the
Southern District of California, Northern Division
No. 849-ND Civil

UNITED STATES OF AMERICA,

Plaintiff,

vs.

HARRY THEODORE PETERSEN, et al.,

Defendants.

STATE OF CALIFORNIA,

Defendant in Intervention,

A. R. CUTLER, et al.,

Defendants in Intervention.

DECLARATORY JUDGMENT

This cause came on regularly for trial before the Court sitting without a jury on December 6, 1949,

Ernest A. Tolin, United States Attorney, Clyde C. Downing and Max F. Deutz, Assistant United States Attorneys, appearing as attorneys for the plaintiff; George Winkler and Gibbs by Elmore W. Winkler appearing for the defendants Harry Theodore Petersen, et al., Fred N. Howser, Attorney General of the State of California by Bayard Rhone appearing for the defendant in intervention, the State of California, and Stammer and McKnight by W. H. Stammer appearing for the defendants in Intervention, A. R. Cutler, et al., and the parties having stipulated to all of the facts in this proceeding, and the Court having filed its Findings of Fact and Conclusions of Law, and being fully satisfied in the premises; [71]

It Is Hereby Ordered, Adjudged and Decreed that at all times since 12 m., Pacific War Time, on the first day of June, 1945, there has been vested in the United States of America exclusive jurisdiction over that privately-owned land, known as "Wilsonia Village," located in Section 5, Township 14 South Range 28 East, Mount Diablo Base and Meridian, and lying within the boundaries of Kings Canyon National Park, subject only to those incidents of jurisdiction expressly reserved by the State of California in the statute of cession, being section 119 of the Government Code of California [Cal. Stat. 1943, C. 96 § 2].

It Is Further Ordered, Adjudged and Decreed that the plaintiff United States of America have its costs and disbursements incurred or expended

herein as taxed by the Clerk in the sum of \$48.78.

Dated: July 15, 1950.

/s/ WM. C. MATHES,
United States District Judge.

Judgment entered July 18, 1950.

Affidavit of Service by Mail attached.

Lodged June 30, 1950.

[Endorsed]: Filed July 17, 1950. [72]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice Is Hereby Given that Harry Theodore Petersen, Ida Petersen, Clayton Leon Daigle, and Azile Carol Daigle, individually and as a co-partnership doing business as "The Lodge," defendants, and State of California, defendant and intervenor above-named, hereby appeal to the United States Court of Appeals for the Ninth Circuit from the declaratory judgment of the Honorable William C. Mathes, entered on July 18, 1950, in [74] Judgment Book No. 6, Page 297 in favor of the plaintiff and against the defendants and intervenors.

Dated: This 30th day of August, 1950.

FRED N. HOWSER,
Attorney General of the State of
California,

/s/ BAYARD RHONE,

Deputy Attorney General.

Attorneys for Intervenor and Defendant, State of
California.

GEORGE, WINKLER & GIBBS,

By /s/ ELMORE WINKLER,

Attorneys for Defendants

Petersen, et al.

Affidavit of Service by Mail attached.

[Endorsed]: Filed August 30, 1950. [75]

 [Title of District Court and Cause.]

APPELLANTS' DESIGNATION OF
RECORD ON APPEAL

To the Clerk of the Above-Entitled Court:

Appellants, the State of California, intervenor and defendant, and Harry Theodore Petersen, Ida Petersen, Clayton Leon Daigle, and Azile Carol Daigle, individually and as a co-partnership doing business as "The Lodge," defendants, through counsel, have appealed from the Judgment which was entered in [78] the above-entitled matter of July 18, 1950, and request hereby the preparation of the record on appeal.

The appellants hereby designate the papers and records on the file or lodged with you which they desire to have incorporated in the Record on Appeal, which consists of the complete record pursuant to Rule 75(d) of the Rules of Civil Procedure

for the United States District Court, which record and papers include and are hereby designated as follows:

1. Complaint for Injunction.
2. Answer of Harry Theodore Petersen, et al.
3. Stipulation Permitting the State of California to Intervene as Defendant; and Order Permitting the State of California to Intervene as Party Defendant.
4. Petition in Intervention and Answer of the State of California.
5. Stipulation of Facts and Purposes of Trial.
6. Minutes of the Court of December 6, 1949.
7. The Opinion of the District Court.
8. Findings of Fact and Conclusions of Law.
9. All Exhibits.
10. Declaratory Judgment.
11. Notice of Appeal.
12. Appellants' Designation of Record on Appeal.

Pursuant to the provisions of Rule 75(o) of the Rules of Civil Procedure for the United States District Court, and Rule 11 of the Rules of the United States Court of Appeal for the Ninth Circuit as Amended, request is hereby made that the Clerk of the above-entitled Court transmit all of the original papers and exhibits as designated by the appellants, and appellees in the files dealing

with the action or the proceedings [79] in which the appeal has been taken.

Dated: August 30, 1950.

FRED N. HOWSER,
Attorney General of the
State of California.

/s/ BAYARD RHONE,
Deputy Attorney General.

Attorneys for Intervenor and Defendant, State of
California.

GEORGE, WINKLER & GIBBS.

By /s/ ELMORE WINKLER,
Attorneys for Defendants
Petersen, et al.

Affidavits of Service by Mail attached.

[Endorsed]: Filed August 30, 1950. [80]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the United States District Court for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 82, inclusive, contain the original Complaint for Injunction; Answer; Stipulation and Order Permitting State of California to Intervene, etc.; Petition in Intervention and Answer of the State of California; Stipulation of Facts for

Purposes of Trial (Government's Exhibit No. 1 at the trial); Memorandum of Decision; Findings of Fact and Conclusions of Law; Declaratory Judgment; Notice of Appeal and Designation of Record on Appeal and a full, true and correct copy of Minute Order Entered December 6, 1949, which, together with Government's Exhibits 1-A, 1-B, 1-C, 1-D and 1-E (Exhibits A, B, C, D and E, respectively, to the Stipulation of Facts for Purposes of Trial) and Government's Exhibit No. 2, transmitted herewith, constitute the record on appeal to the United States Court of Appeals for the Ninth Circuit.

I further certify that my fees for preparing and certifying the foregoing record amount to \$2.40 which sum has been paid to me by appellants.

Witness my hand and the seal of said District Court this 21st day of September, A.D. 1950.

EDMUND L. SMITH,
Clerk.

[Seal] By /s/ THEODORE HOCKE,
Chief Deputy. [81]

[Endorsed]: No. 12694. United States Court of Appeal for the Ninth Circuit. Harry Theodore Petersen, Ida Petersen, Clayton Leon Daigle and Azile Carol Daigle, Individually and as a Copartnership Doing Business as "The Lodge," and State of California, Appellants, vs. United States of America, Appellee. Transcript of Record. Appeal from the United States District Court for the Southern District of California, Northern Divison.

Filed September 25, 1950.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for the Ninth Circuit.

United States Court of Appeals for the
Ninth Judicial Circuit

No. 12694

HARRY THEODORE PETERSEN, IDA PETERSEN, CLAYTON LEON DAIGLE and AZILE CAROL DAIGLE, Individually and as a Copartnership Doing Business as "The Lodge,"

Appellants,

STATE OF CALIFORNIA,

Intervenor and Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

STATEMENT OF POINTS UPON WHICH
APPELLANTS INTEND TO RELY

The appellants, Harry Theodore Petersen, et al., and the State of California intend to rely on appeal on the following points:

1. That the District Court erred in holding that the State of California has ceded to the United States of America exclusive jurisdiction over all territories, publicly and privately owned, within the exterior boundaries of King's Canyon National Park.

2. That the District Court erred in ruling that the State of California has ceded to the United States of America exclusive jurisdiction over that area known as Wilsonia Village, which is located in Section 5, Township 14.

3. That the District Court erred in holding that said tract of land comprising Wilsonia Village was "dedicated and set apart" for park purposes.

4. That the District Court erred in holding that the United States of America had accepted exclusive jurisdiction over all territory publicly and privately owned within the exterior boundaries of King's Canyon National Park.

5. That the District Court erred in holding that the State of California has power under the Constitution of the State of California and under the Constitution of the United States to cede exclusive jurisdiction to the United States of America of privately owned property in the State of California.

6. That the District Court erred in holding that the United States Government has power under the United States Constitution to accept cession of jurisdiction from the State of California of privately owned property in the State of California.

7. That the District Court erred in holding that the Secretary of the Interior and the National Park Service may promulgate rules and regulations relating to property not owned by the United States of America and not set aside and dedicated for park purposes.

8. That the District Court erred in holding that a liquor license, for premises in Wilsonia Village and which is located entirely on privately owned property, should be issued by the National Park Service and not by the State Board of Equalization of the State of California.

9. That the District Court erred in holding that regulations of the National Park Service purporting to govern the sale of liquor on privately owned property is a proper exercise of police jurisdiction of the United States.

10. That the District Court erred in holding that the appellants Petersen, et al., as owners and operators of "The Lodge" are required by Section 12.8 of Title 36, Code of Federal Regulations, to procure a license for the sale of alcoholic beverages from the National Park Service, before offering the same for sale in Wilsonia Village.

11. That the District Court erred in holding that the State of California had no jurisdiction to require a liquor license from, or to issue a liquor license to, the appellants Petersen, et al.

12. That the District Court erred in holding that the United States of America has any criminal remedy whatsoever for alleged violations of national park regulations on privately owned property.

13. That the District Court erred in holding that the United States courts have jurisdiction of offenses not committed within or on lands reserved or acquired for the exclusive use of the United States.

14. That the District Court adopted erroneous conclusions of law which are contrary to the laws of the State of California and the laws of the United States, and the judicial decisions of the state and federal courts.

15. That the District Court erred in holding that the United States took exclusive police jurisdiction away from the State of California by necessity allegedly "to secure the benefits intended to be derived" from the park.

Dated: September 28, 1950.

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/s/ BAYARD RHONE,

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Affidavit of Service by Mail attached.

[Endorsed]: Filed October 2, 1950. [86]